Nos. 06-1208, 06-1290, and 06-1314

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

U-HAUL COMPANY OF CALIFORNIA, INC.

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

and

MACHINISTS DISTRICT LODGE 190, LOCAL LODGE 1173, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Intervenor

MACHINISTS DISTRICT LODGE 190, LOCAL LODGE 1173, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

Respondent

and

U-HAUL COMPANY OF CALIFORNIA, INC.

Intervenor

ON PETITIONS FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

RESPONSE OF THE NATIONAL LABOR RELATIONS BOARD TO THE PETITION FOR REHEARING EN BANC

FRED B. JACOB
Supervisory Attorney

STEVEN B. GOLDSTEIN
Attorney
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2971
(202) 273-3711

RONALD MEISBURG
General Counsel
JOHN E. HIGGINS, JR.
Deputy General Counsel
JOHN H. FERGUSON
Associate General Counsel
LINDA DREEBEN
Deputy Associate General Counsel
National Labor Relations Board

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases: **Page**

TABLE OF AUTHORITIES

Cases --cont'd: **Page(s)**

STATUTES

Regulations

STATEMENT OF THE CASE

On November 13, 2007, a panel of this Court (Circuit Judges Henderson and Tatel and Senior Circuit Judge Williams) issued an unpublished judgment denying the petition of U-Haul Company of California, Inc. ("U-Haul") for review of a decision and order of the National Labor Relations Board ("the Board") and granting the Board's cross-application for enforcement.[1] On December 28, 2007, U-Haul filed a petition for rehearing or rehearing en banc. The Court has directed the Board to file a response to the petition for rehearing en banc. For the reasons stated below, the Board respectfully submits that the petition should be denied.

THE DECISIONS OF THE BOARD AND THIS COURT

U-Haul is engaged in the business of renting trucks and trailers, and operates a repair facility in Fremont, California. (A. 17-18 & n.2.)[2] In the underlying decision, the Board (Members Liebman and Schaumber; Chairman Battista dissenting) found that U-Haul violated Section 8(a)(4) and (1) of the National Labor Relations Act ("the Act") (29 U.S.C. §158(a)(4) and (1)) by maintaining its mandatory arbitration policy as a condition of employment because employees

[1] The Court also denied a petition for review filed by a union challenging the Board's dismissal of certain unfair labor practice allegations against U-Haul. That union has not filed a petition for rehearing.

[2] "A." references are to the Joint Appendix.

would reasonably construe the policy to prohibit the filing of unfair labor practice charges with the Board. (A. 9-10, 13, 20-21.)[3]

The Board noted (A. 9-10) that the policy's extremely broad language plainly defines the types of disputes to be arbitrated in such a way as to encompass, among other things, the same sorts of complaints that employees normally would seek to vindicate by filing unfair labor practice charges with the Board. For example, U-Haul's policy informs employees that they must arbitrate "*all* existing or future *disputes* . . . that are *related in any way to [their] employment*" with U-Haul, and "*covers all disputes relating to* or arising out of *an employee's employment . . . or the termination of that employment*," including "causes of action recognized by federal law or regulations." (A. 169) (emphasis added). The Board also concluded (A. 9) that, given the breadth of the policy's language, employees would reasonably construe the policy to require them to resort to U-Haul's arbitration procedures -- and to forego filing unfair labor practice charges with the Board -- to vindicate their Section 7 rights, notwithstanding that the policy does not expressly state that employees may not file charges with the Board. Thus, the policy states that employees "are *bound to use* [the policy] as the *only means* of resolving any employment-related disputes," and that arbitration is "the *sole and*

[3] The Board also found that U-Haul violated Section 8(a)(3) and (1) of the Act (29 U.S.C. §158(a)(3) and (1)) by discharging two employees because of their union activity. (A. 7 n.4,21.) U-Haul's petition does not address that finding.

exclusive remedy" for any such dispute against U-Haul. (A 169, 172) (emphasis added).

To remedy that violation, the Board's order requires U-Haul to cease and desist from requiring employees to execute waivers of their rights to take legal action with respect to their terms and conditions of employment, "to the extent such waivers apply to the filing of Board charges." (A. 12 ¶1(b).) The Board's Notice to Employees informed employees that U-Haul "WILL NOT require you to execute waivers of your rights to take legal action . . . to the extent that it applies to filing charges to the National Labor Relations Board [and that U-Haul] WILL rescind [its] arbitration provision requiring you to execute a waiver of your rights to take legal action with respect to your . . . terms and conditions of employment, to the extent it applies to filing charges with the National Labor Relations Board." (A. 16.)

The cease and desist order and notice to employees thus make clear that the unfair labor practice at issue only concerns employee waivers insofar as they apply to the filing of Board charges. That is the context for the affirmative relief ordered by the Board, which requires U-Haul to remove from its files all unlawful waivers executed by its employees and to notify each present or former employee who executed such waiver that this has been done and that the waiver will not be used "in any way." (A. 12 ¶2(d).)

The Company filed a petition for review of the Board's Order in this Court, and the Board cross-applied for enforcement. On November 13, 2007, after U-Haul filed a motion to submit the case on the briefs and to dispose of the case without oral argument, the Court enforced the Board's Order in an unpublished judgment without opinion, pursuant to D.C. Circuit Rule 36.

ARGUMENT

I. THERE IS NO NEED FOR THIS COURT TO MODIFY THE BOARD'S ORDER TO CLARIFY FOR A THIRD TIME THAT THE ORDER DOES NOT INVALIDATE U-HAUL'S POLICY IN ITS ENTIRETY

Contrary to U-Haul's claims (Petition 6), rehearing is unnecessary to make clear that the Board did not invalidate U-Haul's arbitration policy "in its entirety," or prevent U-Haul from using its policy "'in any way,' even as to matters having nothing to do with employees asserting Section 7 rights." The Board has already given U-Haul these assurances, both in its brief to this Court and in a letter following this Court's decision that explained the limited actions U-Haul must take to comply with this portion of the Board's Order.

First, as U-Haul concedes (Petition 4-5), the Board's brief to the panel explained that the Board does not interpret its order to prohibit U-Haul from using its policy "in any way." Rather, as the Board noted, the Order merely requires U-Haul to cease and desist from "[r]equiring employees to execute waivers of their rights to take legal action with respect to their hire, tenure, and terms of conditions

of employment, *to the extent such waivers apply to the filing of Board charges.*" (A. 11-12) (emphasis added). Similarly, the Board's Notice to Employees made clear that U-Haul is only required to "*rescind [its] arbitration provision* requiring [employees] to execute a waiver of [their] rights to take legal action with respect to [their] . . . terms and conditions of employment, *to the extent it applies to filing charges with the National Labor Relations Board*." (A. 16-17) (emphasis added).

To reach a contrary result, U-Haul reads one provision in the Board's Order, paragraph 2(d) (A. 12), in isolation, apart from the relevant cease-and-desist and notice provisions (A. 11-12 ¶1(b), 16) that make clear that U-Haul merely must refrain from using its arbitration policy in any way to prohibit employees from filing Board charges. As the Board explained--both to the Court and to U-Haul--the more narrow provisions of the Board's Order make the scope of paragraph 2(d) clear.[4]

Second, consistent with its brief to the Court, the Board has explicitly informed U-Haul that it does not read its order to require U-Haul to forego using its waiver "in any way." Specifically, after the panel enforced the Board's order, the Board's Regional Director responsible for handling compliance notified U-

[4] Even though any ambiguities were present when the Board issued its order, U-Haul did not ask the Board for clarification before petitioning this Court for review and using paragraph 2(d) as a sword to undermine the Board's decision. *See* U-Haul's brief dated May 16, 2007 at pp. 15, 17, 19-20, 26, 29-30.

Haul's counsel in writing that he would consider U-Haul in compliance with the portion of the Board's Order relating to the arbitration policy if U-Haul:

- Complies with the cease and desist portions of the Board's Order;
- "*[N]otifies* in writing *each present or former employee--who has executed a waiver of his rights to take legal action with respect to their hire, tenure, and terms and conditions of employment*--that such a waiver does not preclude employee access to Board proceedings. . . and *that the waiver will not be used in any way to deny such present or former employee access to Board proceedings*;"
- Rescinds its arbitration policy only "to the extent it applies to filing charges with the National Labor Relations Board;" and
- Posts the Board notices.

(*See* Regional Director's Letter p.3)[5] This is consistent with the clarification U-Haul has requested from the Court. Accordingly, the Board respectfully submits that there is no need for the Court to modify the Board's order to clarify for yet a third time that the order does not prevent U-Haul from using its arbitration policy "in any way." *See NLRB v. Aluminum Casting & Engineering Co., Inc.*, 230 F.3d 286, 288, 296-97 (7th Cir. 2000) (enforcing portion of Board's remedy "only as clarified by the Board's counsel at oral argument").

However, if the Court concludes otherwise, the Board does not object to the entry of a judgment that, with respect to the arbitration policy violation, tracks the

[5] A copy of the Regional Director's letter to U-Haul's counsel is included in an addendum attached to this brief for the convenience of the Court.

language in the Regional Director's letter. *Cf. Montgomery Ward & Co. v. NLRB*, 339 F.2d 889, 894 (6th Cir. 1965) ("We find no evidence presented herein of any national pattern of unfair labor practices and the brief filed on behalf of the Board acknowledges that its order should be read as applicable only to the Big Springs, Texas, store. The order should so provide.").

II. REHEARING EN BANC OF THE PANEL'S UNPUBLISHED, NONPRECEDENTIAL JUDGMENT IS NOT WARRANTED

In the alternative, U-Haul requests that the Court grant rehearing en banc of the panel's unpublished judgment if the Court declines to clarify the Board's order. Rule 35(b) of the Federal Rules of Appellate Procedure requires that a petition for rehearing en banc show that the case involves a question of exceptional importance or that the panel decision conflicts with a decision of the Supreme Court, this Court, or another court of appeals. U-Haul has failed to show that any of those conditions is met here; instead it merely repeats some of the same arguments it made to the panel, several of which had not been presented to the Board in the first instance and were therefore waived. The panel's decision to enforce the Board's order in an unpublished judgment without opinion -- after U-Haul filed its motion to waive oral argument -- demonstrates that the panel itself recognized that the case

does not present a question of exceptional importance, and that the Board's decision does not conflict with Supreme Court or appellate precedent.[6]

Primarily, U-Haul claims (Petition 7-9) that rehearing is necessary because the panel's unpublished judgment enforcing the Board's decision "flies in the face of ... precedent endorsing arbitration of employment disputes pursuant to the Federal Arbitration Act." In support of its argument, U-Haul cites (Petition 8-9) a series of cases holding that an employer may compel an employee to arbitrate claims involving race or age discrimination, provided the employee is not charged for the cost of the arbitration, and the arbitration agreement provides the potential for the same remedies the employee could obtain by filing a private lawsuit. *See, for example, Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991) ("*Gilmer*"); *Booker v. Robert Half Int'l, Inc.*, 413 F.3d 77 (D.C. Cir. 2005); *Cole v. Burns Int'l Security Services*, 105 F.3d 1465 (D.C. Cir. 1997) ("*Cole*").

As the Board argued to the panel, however, this Court lacks jurisdiction under Section 10(e) of the Act (29 U.S.C. §160(e)) to consider U-Haul's argument, because U-Haul never made that argument to the Board in its exceptions to the judge's decision. (Exceptions.) *Woelke & Romero Framing, Inc. v. NLRB*, 456

[6] D.C. Circuit Rule 36(a)(1) states that it "is the policy of this court to publish opinions and explanatory memoranda that have general pubic interest." Rule 36(b) states that this Court "may . . . dispense with published opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate[.]"

U.S. 645, 665-66 (1982). Instead, U-Haul made two different arguments to the Board, claiming that employees would not interpret the policy's language to prohibit access to the Board and that, even if its policy did violate the Act, the judge's recommended order was overbroad insofar as it struck down the policy's application to lawsuits "unrelated to the NLRA." (A. 60, 79-81, 90-91.) Thus, U-Haul provides no basis for rehearing en banc. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 311-12 & n.10 (1979) ("Section 10(e) precludes a reviewing court from considering an objection that has not been urged before the Board" absent extraordinary circumstances).

In any event, U-Haul's new argument lacks merit, because the Board majority expressly (A. 10 n.11) did "not pass on the lawfulness of mandatory arbitration provisions." Indeed, the issue of whether an employer may require an employee, who is not covered by a collective-bargaining agreement, to arbitrate a claim that he was fired for union activity has *never* been an issue in this case, because U-Haul admittedly never tried to force the discriminatees to arbitrate their discharge claims. Instead, as shown, the Board found the policy unlawful only because it has a tendency to inhibit employees from filing charges with the Board. Because the Board majority expressly (A. 10n.11) did "not pass on the lawfulness of mandatory arbitration provisions," and "limited [its decision] to the specific clause at issue in this case," there is no basis for U-Haul's accusation (Petition 3,

14-15) that the panel's judgment enforcing the Board's order will render literally "millions" of arbitration policies presumptively unlawful. Indeed, by enforcing the Board's order in an unpublished, nonprecedential judgment, the panel likely recognized that the Board's holding was narrow and unremarkable.

The Board's limited holding in this case is also entirely consistent with the principles articulated in U-Haul's Supreme Court and in-circuit cases. As this Court has noted, the Supreme Court's decision in *Gilmer* does not "mandat[e] the enforcement of *all* mandatory agreements to arbitrate statutory claims; rather, [it merely] requir[es] the enforcement of arbitration agreements that do not undermine the relevant statutory scheme." *Cole*, 105 F.3d at 1468 (emphasis added).

Because the Board cannot initiate its own processes and must depend "upon the initiative of individual persons who must ... invoke its sanctions through filing an unfair labor practice charge," *Nash v. Florida Industrial Commission*, 389 U.S. 235, 235, 238 (1967) ("*Nash*"), arbitration agreements *do* undermine the statutory scheme of the Act if they are worded in such a way as to reasonably lead employees to believe that they are prohibited from filing unfair labor practice charges with the Board. Surely, if an arbitration policy intimidated employees from filing unfair labor practice charges, the Board would be unable to carry out its mission. As the Supreme Court has stated, the Board "does not exist for the 'adjudication of private rights;' it 'acts in a public capacity to give effect to the

declared policy of the Act.'" *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 193 (1941) (citation omitted). Therefore, "it is unlawful for an employer to seek to restrain ... employee[s] in the exercise of [their] right to file charges" with the Board. *Nash*, 389 U.S. at 238 (noting that Section 8(a)(4) (29 U.S.C. §158(a)(4)) makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges ...."). And, an overbroadly-worded arbitration clause, like U-Haul's, does just that.

Furthermore, as the Board noted (A. 10 n.11), the Supreme Court has held that the mere fact that an employee has signed a mandatory arbitration agreement does *not* waive the employee's right to file charges with a federal agency (*Gilmer*, 500 U.S. at 28), and does not waive "the statutory prerogative [of a federal agency] to enforce [the underlying claim] for whatever relief and in whatever forum [the agency] sees fit." *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294, 295-97 & n.10 (2002). Put simply, it would be anomalous to hold that arbitration agreements are not binding on federal agencies that were never parties to them, but then to hold such agreements lawful even if they have a tendency to inhibit employees from filing charges with the appropriate federal agencies that are necessary to alert the

agencies of the need to take action.[7] Thus, even on the merits of U-Haul's waived arguments, rehearing en banc is not warranted.

U-Haul's remaining contentions fare no better. First, the Court lacks jurisdiction under Section 10(e) of the Act to consider U-Haul's claim (Petition 12-13) that the Board's decision places union and nonunion arbitration agreements on unequal footing, because U-Haul never made that argument to the Board. In any event, nothing in the Board's decision suggests that the Board would find lawful an arbitration provision in a collective-bargaining agreement that was worded in such a way as to have a reasonable tendency to inhibit employees from filing charges with the Board.

Second, contrary to U-Haul's additional claim (Petition 7, 11-12), the Board's decision does not conflict with Court and Board precedent governing the interpretation of facially neutral work rules such as anti-harrassment policies. *See Adtranz ABB Daimler-Benz Transportation v. NLRB*, 253 F.3d 19, 28 (D.C. Cir. 2001); *Martin Luther Memorial Home*, 343 NLRB 646, 647-48 (2004). To the

[7] Contrary to U-Haul's suggestion (Petition 9), nothing in this Court's opinion in *Cole*, 105 F.3d 1465 (1997) even remotely suggests that a mandatory arbitration provision is lawful even if it inhibits employees from filing charges with federal agencies. The *Cole* Court did not address that issue, which is not surprising given that nothing in the Court's opinion suggests that it was raised to the Court. Indeed, the *Cole* Court noted on two separate occasions that the parties there agreed that the relevant arbitration provision "does *not* affect an employee's ability to seek relief from the Equal Employment Opportunity Commission." *Id.* at 1469 n.3, 1480 (emphasis added).

contrary, this Court has recently reiterated that, even if an employer's policy does not explicitly restrict activity protected by the Act, the Board may still find a violation if employees would reasonably construe the policy to prohibit the protected activity. *See, for example, Guardsmark LLC v. NLRB*, 475 F.3d 369, 374 (D.C. Cir. 2007) ("*Guardsmark*"). As this Court has explained, in determining whether an employer's policy interferes with employee rights under the Act, the appropriate inquiry is whether, considering the wording of the employer's policy at issue, the policy would "'reasonably tend to chill employees in the exercise'" of their rights under the Act. *Id.* (citation omitted). *Accord Brockton Hospital v. NLRB*, 294 F.3d 100, 107 (D.C. Cir. 2002) (citation omitted). Given the breadth of the arbitration policy's language, the Board was warranted in concluding (A. 9) that the policy has a reasonable tendency to inhibit employees from filing unfair labor practice charges with the Board, notwithstanding that the policy does not expressly state that employees may not file charges with the Board. *See Beverly Health & Rehabilitation Services, Inc. v. NLRB*, 297 F.3d 468, 472, 475, 478 (6th Cir. 2002) (finding unlawful rule requiring employees to cooperate with employer investigations of "violation[s] of . . . laws[] or government regulations" even though the policy did not explicitly mention unfair labor practice investigations); *cf. Brockton*, 294 F.3d at 106-07 (rejecting employer's confidentiality policy that prevented employees from sharing "'information concerning [themselves]'"

because it could be reasonably interpreted to prohibit discussion of wages, hours, and working conditions).

Third, there is no more merit to U-Haul's suggestion (Petition 1) that it cannot be found to have violated the Act because there is no evidence that it ever enforced its arbitration policy against employees who wished to file unfair labor practice charges. As this Court recently reiterated: "'[M]ere maintenance' of a rule likely to chill [S]ection 7 activity, whether explicitly or through reasonable interpretation, can amount to an unfair labor practice 'even absent evidence of enforcement.'" *Guardsmark*, 475 F.3d at 374 (citing authorities). Thus, the Board has "no reason to consider the absence of enforcement" against protected activity if the challenged rule is likely to chill protected activity. *Id.* at 376.

Finally, U-Haul is simply wrong in claiming (Petition 2-3, 5) that, because it has never applied its policy to prohibit the filing of Board charges, it should not be required to notify employees who have executed its agreement to arbitrate that it will not use the policy to deny them access to Board proceedings. This argument is meritless, because where, as here, an employer's policy does have a reasonable tendency to interfere with Section 7 rights, the Board may find an unfair labor practice and order appropriate relief even in the face of the employer's protestations that it has never applied the policy against the protected activity. *See Cintas Corp. v. NLRB*, 482 F.3d 463, 465-66, 468-70 (D.C. Cir. 2007) (upholding

Board's order requiring employer to change rule's offending language even though employer claimed that it had never interpreted or applied the rule to prohibit Section 7 activity).

CONCLUSION

For the foregoing reasons, the Board respectfully submits that the Court should deny U-Haul's petition for rehearing en banc.

_____
FRED B. JACOB
Supervisory Attorney

_____
STEVEN B. GOLDSTEIN
Attorney
National Labor Relations Board
(202) 273-2971
(202) 273-3711

RONALD MEISBURG
General Counsel
JOHN E. HIGGINS, JR.
Deputy General Counsel
JOHN H. FERGUSON
Associate General Counsel
LINDA DREEBEN
Deputy Associate General Counsel

National Labor Relations Board
January 2008

ADDENDUM

United States Government

NATIONAL LABOR RELATIONS BOARD
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

Telephone: (510) 637-3260
Fax No: (510) 637-3315

December 14, 2007

Richard S. Cleary
Greenebaum Doll & McDonald, PLLC
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202-3197
Phone: 502-587-3504
Fax: 502-540-2238

Re: *U-Haul Company of California, Inc. v. NLRB*
D.C. Cir. Nos. 06-1208, 06-1290, 06-1314
(Board Case No. 32-CA-20665-1)

Dear Mr. Cleary:

This is to advise you of the steps U-Haul Company of California, Inc. needs to take to achieve compliance with the portion of the Board's order dealing with the unlawful arbitration policy. As you know, that portion of the Board's order provides in part:

ORDER

The National Labor Relations Board orders that the Respondent, U-Haul Company of California, Fremont, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

* * *

(b) Requiring employees to execute waivers of their rights to take legal action with respect to their hire, tenure, and terms and conditions of employment, to the extent such waivers apply to the filing of Board charges.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

* * *

(d) Within 14 days from the date of this Order, remove from its files all unlawful waivers of the right to take legal action executed by its employees, and within 3 days

thereafter, notify in writing each present or former employee who executed such waiver that this has been done and that the waiver will not be used in any way.

* * *

(f) Within 14 days after service by the Region, post at its Fremont, California facility copies of the attached notice marked "Appendix A" and, at each of its other facilities where its arbitration policy has been in effect, copies of the attached notice marked "Appendix B." Copies of the notices, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 20, 2003.

***

The relevant portion of the Notice contained in Appendix A stated:

***

WE WILL NOT require you to execute waivers of your rights to take legal action with respect to your hire, tenure, and terms and conditions of employment, to the extent that it applies to filing charges to the National Labor Relations Board.

* * *

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the rights guaranteed you by Section 7 of the Act.

***

WE WILL rescind our arbitration provision requiring you to execute a waiver of your rights to take legal action with respect to your hire, tenure, and terms and conditions of employment, to the extent it applies to filing charges with the National Labor Relations Board.

The relevant portion of the notice in Appendix B stated:

***

WE WILL NOT require you to execute waivers of your rights to take legal action with respect to your hire, tenure, and terms and conditions of employment, to the extent that it applies to filing charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our arbitration provision requiring you to execute a waiver of your rights to take legal action with respect to your hire, tenure, and terms and conditions of employment, to the extent it applies to filing charges with the National Labor Relations Board.

Full compliance with those portions of the Board's order will be achieved when the Company:

-complies with the cease and desist provisions set forth above;

-notifies in writing each present or former employee--who has executed a waiver of his rights to take legal action with respect to their hire, tenure, and terms and conditions of employment--that such a waiver does not preclude employee access to Board proceedings in order to assert Section 7 rights, and that the waiver will not be used in any way to deny such present or former employee access to Board proceedings;

-rescinds its arbitration provision requiring employees to execute a waiver of their rights to take legal action with respect to their hire, tenure, and terms and conditions of employment, to the extent it applies to filing charges with the National Labor Relations Board; and

-posts the Board Notices for the requisite period of time.

Very truly yours,

Alan B Reichard

Alan B. Reichard
Regional Director

cc:

Linda Dreeben
Assistant General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

U-HAUL COMPANY OF CALIFORNIA	)	
	)	
Petitioner/Cross-Respondent	)	
	)	
v.	)	D. Cir. Nos: 06-1208,
	)	06-1290,
NATIONAL LABOR RELATIONS BOARD	)	06-1314
	)	
Respondent/Cross-Petitioner	)	
	)	
and	)	
	)	
MACHINIST DISTRICT LODGE LOCAL 190, LOCAL LODGE 1173, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	)	
	)	
Intervenor	)	

MACHINIST DISTRICT LODGE LOCAL 190, LOCAL LODGE 1173, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	)	
	)	
Petitioner	)	
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent	)	
	)	
and	)	
	)	
U-HAUL COMPANY OF CALIFORNIA	)	
Intervenor	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Board has this date hand delivered to the Clerk of the Court the required number of copies of the Board's response to the petition for rehearing en banc, and has served two copies of that response by overnight mail upon the following counsel at the addresses listed below:

Richard Cleary
Greenbaum Doll & McDonald
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202-3197
502-589-4200

David Rosenfeld
Weinberg, Roger and Rosenfeld
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501
510-337-1001

Jonathan S. Franklin
Fulbright & Jaworksi LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-662-0466

_____

LINDA DREEBEN
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street N.W.
Washington, D.C. 20570
202-273-2960

Dated at Washington, D.C.
this 25th day of January 2008
uhaul-petcer